

**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of Oak Creek Water and Sewer Utility, Milwaukee County,  
Wisconsin, for Authority to Increase Water Rates

4310-WR-104

**ORDER**

This is the Order in the matter of Oak Creek Water and Sewer Utility's (Oak Creek) request for hearing. The request is granted, but the hearing shall be limited as explained below.

The Commission issued a Final Decision in this docket on July 23, 2012, after a hearing the Commission held on April 26, 2012. (PSC REF#: 169775.) By Order dated September 25, 2012, the Commission reopened this docket under Wis. Stat. § 196.39 to reconsider the Final Decision. At its open meeting of October 3, 2012, the Commission made a preliminary determination to modify certain aspects of its Final Decision based upon the record identified in the Summary Memorandum. (PSC REF#: 168749.)

In an October 4, 2012 Order, the Commission made a preliminary determination to modify the Final Decision to narrow the differential rate of return between wholesale and retail customers from 180 to 100 basis points; and to reduce from 50 percent to zero, the allocation of the 12-inch water mains within the city of Oak Creek to transmission. (PSC REF#: 173880.) The Commission based its preliminary determination on the record developed at the April 26 hearing. The Commission provided a further opportunity for hearing if any party identified the reason why a hearing was required. The Commission's Order limited the hearing to the two issues that the Commission modified, as explained above, and required that only new evidence may be presented.

On October 10, 2012, Oak Creek requested a hearing. (PSC REF#: 174347.) The City of Franklin Municipal Water Utility responded on October 15, 2012. (PSC REF#: 174680.) Oak

Creek argues that the Commission's Order dated September 25, 2012, reopening this docket is invalid. Oak Creek suggests that Wis. Stat. § 196.39(1) requires that the Commission issue a notice of intent to reopen the proceeding, and offer the parties an opportunity to be heard prior to reopening. The Commission declines to follow Oak Creek's suggestion.

The Commission is not required to hold a hearing before reopening a docket. Wisconsin Stat. § 196.39(1) states:

The commission at any time, upon notice to the public utility and after opportunity to be heard, may rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order in the case, for any reason.

The plain language of the statute which provides that the Commission "may reopen any case following the issuance of an order in the case, for any reason" does not provide for an opportunity to be heard before reopening. The opportunity to be heard occurs *after* reopening, and only *if* the Commission considers amending its Final Decision. At its open meeting of October 3, 2012, the Commission considered amending its Final Decision on two issues. Thus, the hearing pursuant to Oak Creek's request is granted, but shall be limited to new evidence on the issues of the differential rate of return and allocation of 12-inch mains.

The hearing record in this matter remains open. The Commission authorizes the Administrative Law Judge to set the matter for limited hearing as explained above.

Jurisdiction is retained.

Dated at Madison, Wisconsin, this 2<sup>nd</sup> day of November, 2012

By the Commission:



Sandra J. Paske  
Secretary to the Commission

PUBLIC SERVICE COMMISSION OF WISCONSIN  
610 North Whitney Way  
P.O. Box 7854  
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**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.<sup>1</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

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<sup>1</sup> See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.